

Applicants: Calas *et al.*  
Serial No. 09/485,571

technical features. In particular, each peptide is directed to distinct chemical entities; and methods which use different materials and produce different effects.

Applicants provisionally elect the following species **with traverse**: the sequence listed as **RRLYSYSRRRF** in claim 7. This sequence corresponds to SEQ ID NO: 23 as set forth in the Sequence Listing and Preliminary Amendment filed on September 25, 2000 in response to the Notice to Comply with Sequence Listing Requirements dated August 25, 2000.

Applicants request modification of the present election requirement under 37 C.F.R. §1.143. The M.P.E.P. states:

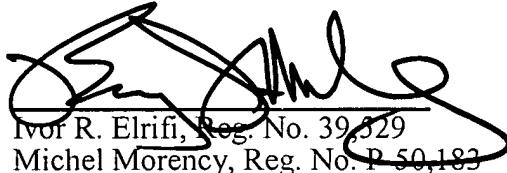
If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, **the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions**. In such a case, the examiner will not follow the procedure described below and will not require restriction. Since the decisions in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas*, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is **improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention**. *In re Harnish*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, **unity of invention exists where compounds included within a Markush group (1) share a common utility and (2) share a substantial structural feature disclosed as being essential to that utility**.

The peptides in claim 7 of the present invention are not individually distinct and independent, but are, in fact, **derivatives of the same superfamily of proteins**, the “protegrins”. The peptides in claim 8 of the present invention are not individually distinct and independent, but are, in fact, **derivatives of the same superfamily of proteins**, the “tachyplesins”. The peptides of both claim 7 and 8 are linear peptides having antimicrobial activity that are devoid of a disulphide bond and are utilized to vector active substances in an organism. While the peptides listed in claim 7 and 8 are in fact all different peptides, they are all directed to the same invention linked to form a single general concept -- the vectoring of active substances in an organism. The election of a single peptide sequence in claims 7 and 8 is thus improper. *Id.* Accordingly,

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Applicants respectfully request reconsideration and withdrawal of the present Election Requirement.

Respectfully submitted,



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